

REMARKS

Claims 1-24 and 37-50 are all the claims pending in the application. By this Amendment, Applicant amends claims 1, 15, 41, and 45-47 to further clarify the invention and to cure minor informalities. Claim 11 is amended for conformity with the amended claim 1. No new matter is being added.

I. Preliminary Matters

As a preliminary matter, Applicant thanks the Examiner for acknowledging the claim to foreign priority under 35 U.S.C. § 119, and receipt of the certified copy of the priority document.

II. Summary of the Office Action

Claims 41, 43-47, 49, and 50 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Claims 23, 24, 41-47 and 49-50 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Claims 1-3, 5-12, 15-24, 37-42 and 45-49 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,167,464 to Kretschmann (hereinafter “Kretschmann”). Claims 4, 13, and 14 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kretschmann in view of U.S. Patent No. 7,143,149 to Oberg et al. (hereinafter “Oberg”).

III. Claim Rejections under 35 U.S.C. § 112, first paragraph

Claims 41, 43-47, 49, and 50 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Applicant respectfully traverses these grounds of rejection at least in view of the following exemplary comments.

With respect to claim 41, Applicant respectfully requests the Examiner to withdraw this rejection of the claim in view of the self-explanatory claim amendment being made herein.

Amended claim 41 is clearly supported throughout the specification *e.g.*, ¶ 41 of the specification. In view of the foregoing, Applicant respectfully requests the Examiner to withdraw this rejection of claim 41.

Regarding claims 43 and 44, the Examiner contends that the specification, as originally filed, never specifically disclosed any mention of a distance (*see* page 3 of the Office Action). However, Applicant respectfully submits that one of ordinary skill in the art would readily understand in light of the specification that these distances are commonly known with a short-range communication.¹

Regarding claims 45 and 46, Applicant respectfully requests the Examiner to withdraw this rejection of the claims in view of the self-explanatory claim amendments being made herein. Amended claims 45 and 46 are clearly supported throughout the specification *e.g.*, ¶ 38 of the specification. In view of the foregoing, Applicant respectfully requests the Examiner to withdraw this rejection of claims 45 and 46.

Regarding claim 47, Applicant respectfully requests the Examiner to withdraw this rejection of the claim in view of the self-explanatory claim amendment being made herein. Amended claim 47 is clearly supported throughout the specification *e.g.*, ¶ 45 of the specification. In view of the foregoing, Applicant respectfully requests the Examiner to withdraw this rejection of claim 47.

Regarding claim 49, the Examiner contends that the term “type” is not disclosed in the specification (*see* page 3 of the Office Action). Applicant respectfully disagrees. The specification clearly describes different types of the HMI data *see e.g.*, ¶ 45 of the specification.

¹ <http://en.wikipedia.org/wiki/Bluetooth>, last visited August 23, 2007.

In other words, different types of HMI data are clearly disclosed in the specification. Therefore, the grounds of rejection regarding claim 49 are inaccurate and Applicant respectfully requests that this rejection of claim 49 be withdrawn.

Regarding claim 50, the Examiner contends that the feature of having different type of HMI data is transmitted depending on whether the technical installation is visible from the location of the mobile control unit is not adequately supported by the specification (*see* pages 3-4 of the Office Action). Applicant respectfully disagrees. Applicant respectfully directs the Examiner's attention to exemplary embodiments described in ¶¶ 12, 13, 17, and 22 of the specification. In light of these exemplary embodiments, one of ordinary skill in the light would readily know how to implement the above-noted features of claim 50. Therefore, the grounds of rejection regarding claim 50 are inaccurate and Applicant respectfully requests that this rejection of claim 50 be withdrawn.

IV. Claim Rejections under 35 U.S.C. § 112, second paragraph

Claims 23, 24, 41-47, 49, and 50 are rejected under 35 U.S.C. § 112, second paragraph as being indefinite. Applicant respectfully traverses these grounds of rejections at least in view of the following exemplary comments.

Regarding claims 23 and 24, the Examiner contends that the term "short-range" is a relative term and that one of ordinary skill in the art would not know what constitutes "short" range (*see* page 2 of the Office Action). Applicant respectfully disagrees. Applicant respectfully submits that one of ordinary skill does know what constitutes short-range communication. The term is used in the context of wireless communications, especially in conjunction with the

Bluetooth standard.² Application respectfully submits that the Examiner is yet to show that the claims cannot recite a term of art such as “short-range communication” and “Bluetooth,” which are known in the art and commonly used in the field. Applicant respectfully requests the Examiner to withdraw this rejection of claims 23 and 24.

Claims 41-47, 49, and 50 are rejected under 35 U.S.C. §112, second paragraph. Without further discussing the grounds of rejection, Applicant submits that these claims are not indefinite for at least analogous reasons as already discussed with regard to the rejection of these claims under 35 U.S.C. §112, first paragraph. Therefore, Applicant respectfully requests the Examiner to reconsider and withdraw this rejection of claims 41-47, 49, and 50.

V. Claim Rejections under 35 U.S.C. § 102

Claims 1-3, 5-12, 15-24, 37-42, and 45-49 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,167,464 to Kretschmann (hereinafter “Kretschmann”). Applicant respectfully traverses these grounds of rejection at least in view of the following exemplary comments.

Independent claim 1 *inter alia* recites: “transmitting from the technical installation and loading human-machine-interface (HMI) data of the technical installation into the assigned universal mobile control and monitoring module; and controlling the technical installation using the HMI data loaded into the assigned universal mobile control and monitoring module, wherein said loading of the HMI data for the control of the technical installation into the assigned universal mobile control and monitoring module is controlled as a function of a distance from the technical installation to the assigned universal mobile control and monitoring module.” For

² <http://en.wikipedia.org/wiki/Bluetooth>, last visited August 23, 2007.

example, the transmission and loading of the HMI data that is used to control the technical installation is based on the position of the mobile control and monitoring module with respect to the assigned technical installation such that certain functions may be implemented only from a certain distance from the technical installation and certain other functions may be implemented at a different distance with respect to that same technical installation (e.g., ¶¶ 21 and 22 of the specification).

The Examiner contends that Kretschmann discloses that the portable HMI 28 is used to control the process and not just to monitor data (*see* pages 11-12 of the Office Action). For support of this position the Examiner relies on col. 1, lines 51 to 52 of Kretschmann. This portion of the Kretschmann reference, however, relates to prior art technique and not to Kretschmann's invention. Applicant respectfully notes that to the extent that the Examiner is combining the prior art techniques disclosed in Kretschmann with the invention in Kretschmann, these different techniques may not be combined absent a specific teaching to do so. See *In re Kramer*, 18 USPQ2d 1415, 1416 (Fed. Cir. 1991); *Ex parte Beuther*, 71 USPQ2d 1313, 1316 (BPAI 2003). In other words, it is clear that the rejection under § 102 is improper.

Furthermore, if the Examiner alleges that the technique of Kretschmann *inherently* discloses that the portable HMI 28 is used to control and monitor data, Applicant respectfully notes that the HMI 28 may be used to simply monitor data. Applicant respectfully notes that under the doctrine of “inherency,” if an element is not expressly disclosed in a prior art reference, the reference will still be deemed to anticipate a subsequent claim if the missing element “is necessarily present in the thing described in the reference” *Cont’l Can Co. v. Monsanto Co.*, 948 F.2d 1264, 1268, 20 U.S.P.Q.2d 1746, 1749 (Fed. Cir. 1991). “Inherent anticipation requires that the missing descriptive material is ‘**necessarily present,**’ not merely

probably or possibly present, in the prior art.” (emphasis added) *Trintec Indus., Inc. v. Top-U.S.A. Corp.*, 295 F.3d 1292, 1295, 63 U.S.P.Q.2d 1597, 1599 (Fed. Cir. 2002); see also MPEP §2112. Since Kretschmann only discloses monitoring the control process (Fig. 8; col. 2, line 65 to col. 3, line 3 and col. 6, lines 46 to 55), the controlling of the process via the portable HMI is **not necessarily present**.

In addition, Kretschmann only discloses providing from the central processor 12 portions of a control process that relate to a machine 18 associated with the portable HMI 28 (Figs. 1-3; col. 5, line 66 to col. 6, line 12). Kretschmann further discloses a locator that provides to the terminal outputs from a given machine based on the location signal (col. 2, lines 46 to 60). Kretschmann does not disclose or suggest controlling the data loaded into the HMI 28 based on the distance of the HMI 28 from the assigned technical installation. That is, Kretschmann does not disclose or suggest controlling the machine as a function of the location. In Kretschmann, there is no disclosure or suggestion of, for example, blocking only certain function if the HMI is too far away from the machine and allowing the HMI to execute more and more functions as the HMI gets closer to the technical installation.

Therefore, “transmitting from the technical installation and loading human-machine-interface (HMI) data of the technical installation into the assigned universal mobile control and monitoring module; and controlling the technical installation using the HMI data loaded into the assigned universal mobile control and monitoring module, wherein said loading of the HMI data for the control of the technical installation into the assigned universal mobile control and monitoring module is controlled as a function of a distance from the technical installation to the assigned universal mobile control and monitoring module,” as set forth in claim 1 is not disclosed by Kretschmann, which lacks controlling the technical installation using the HMI data

and controlling the technical installation as a function of the distance from the technical installation to the mobile module. For at least these exemplary reasons, claim 1 is patentably distinguishable from Kretschmann. Accordingly, Applicant respectfully requests the Examiner to withdraw this rejection of claim 1 and its dependent claims 2, 3, 5-12, 37, 38, 41, and 45-49.

Next, independent claim 15 recite features similar to, although not necessarily coextensive with, the features argued above with respect to claim 1. Therefore, arguments presented with respect to claim 1 are respectfully submitted to apply with equal force here. For at least substantially analogous exemplary reasons, therefore, independent claim 15 is patentably distinguishable from Kretschmann. Dependent claims 16-24, 39, 40, and 42-44 are patentable at least by virtue of their dependency on claim 15.

VI. Claim Rejections under 35 U.S.C. § 103

Claims 4, 13, and 14 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kretschmann in view of U.S. Patent No. 7,143,149 to Oberg et al. (hereinafter “Oberg”). Applicant respectfully traverses these grounds of rejection at least in view of the following exemplary reasons.

Claim 4, 13, and 14 depend on claim 1. Applicant has already demonstrated that Kretschmann does not meet all the requirements of independent claim 1. Oberg does not cure the above-noted deficiencies of Kretschmann. Together, the combined teachings of these references would not have (and could not have) led the artisan of ordinary skill to have achieved the subject matter of claim 1. Since claims 4, 13, and 14 are dependent upon claim 1, they are patentable at least by virtue of their dependency.

VII. Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly invited to contact the undersigned attorney at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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